IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

Bail Appl..No. 7603 of 2007()

CRIME NO.206/02 OF PERINGOME POLICE STATION

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PETITIONER/ACCUSED

N.UMMER, AGED 47 YEARS,S/O. ABDULLA,
'UMMAS' PEERAKKAMTHADAM, P.O. PILATHARA,
KANNUR DISTRICT.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS: RESPONDENTS

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM
(S.H.O.PERINGOME POLICE STATION)

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7603 OF 2007

Dated this the 10th day of December, 2007

ORDER

Application for anticipatory bail. The petitioner faces indictment in a prosecution under Sec.376 of the IPC. The crux of the allegations against the petitioner raised in a private complaint filed by the de facto complainant which was referred later to the police under Sec.156(3) of the Cr.P.C. was that she was subjected to rape on 10/8/01. She filed the private complaint only after she gave birth to a child. Investigation is complete. Final report has already been filed. Cognizance has been taken. Committal proceedings has been registered. Coercive processes have been issued against the petitioner by the learned Magistrate after taking cognizance. The petitioner apprehends imminent arrest in execution of such coercive processes.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. There was an offence of rape at all. Long after the alleged incident and even after the birth of the child, a false complaint has been filed. The police, without proper application of mind, has filed the final report also. At any rate, the petitioner does not deserve to endure the trauma of arrest and detention now, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor does not oppose the application and I am satisfied that invoking the dictum in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662) the petitioner can be granted anticipatory bail subject, of course, to appropriate conditions.

4. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioner shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 17/12/07. He shall be released on regular bail on his executing a bond for Rs.50,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall make himself available for interrogation before the Investigating Officer as and when

directed by the Investigating Officer in writing to do so.

(iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if these directions were not issued at all;

(iv) If the petitioner were arrested prior to his surrender on 17/12/07 as directed in clause (i) above, he shall be released on his executing a bond for Rs.50,000/- without any sureties undertaking to appear before the learned Magistrate on 17/12/07.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge